IN THE HIGH COURT OF JUDICATURE AT BOMBAY
Civil Appellate Side

Writ Petition No. 689 of 2006

Municipal Corporation of
Thane ..Petitioner

vs.

1. Kolshet Gramstha Mandal
and another ..Respondents

Shri R.S.Apte for petitioner.
Shri V.A.Thorat, Sr.Counsel with Shri Vaibhav Sugdare i/b Shri Basant Tilokani for respondents.

CORAM:S.C.DHARMADHIKARI J.
26th April, 2007

P.C.

1. This petition is directed against the order passed on an application of the petitioner/original defendant praying for dismissal of the suit on the ground that necessary relief has not been obtained prior to the institution of the same.

2. The argument was based upon the applicability of section 91 of the Code of Civil Procedure.

3. In my view, it would not be proper to go into this controversy at this stage and it would be permissible for the petitioner/original defendant to raise this objection while the suit is taken up for hearing. The application, therefore, shall be dealt with by the Trial Court during

the course of the proceedings. It would be open for it to pass such orders as are permissible in law. Writ petition is disposed of. Needless to state that the order below Exh.21 would not preclude the petitioner/original defendant from raising all pleas about the maintainability of the suit.

(S.C.DHARMADHIKARI J.)